

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1, 2, 7-11, 14, 18-21, 26-31, 33-40 and 45 are pending in the application. Claims 9-11, 18-21, 26-31, 33-36 and 45 were withdrawn under a restriction requirement as drawn to a non-elected invention. Claims 1, 7-8, 14, and 37-39 have been rejected. Claims 2 and 40 have been objected to. Claims 2, 14, and 40 have now been canceled. Claims 1 and 37 have now been amended.

35 U.S.C. § 112, First Paragraph, Rejections

The Examiner has rejected claims 1, 7-8 and 37-39 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, has possession of the claimed invention. The Examiner's rejections are respectfully traversed. Claims 1 and 37 have now been amended.

In particular, the examiner points out that while the specification was enabling for a method of producing a mutant miniature tomato plant having a desired trait, it does not provide enablement for other plant species.

Although Applicant strongly believes that the state of the art at the time of filing the instant application enabled use of other miniature plant varieties, some of which were described in the response filed to the previous office action, in order to expedite prosecution in this case, Applicant has elected to amend Claims 1 and 37 to now recite tomato plants, thereby overcoming the 35 U.S.C. § 112, first paragraph, rejections.

35 U.S.C. § 102/103 Rejections

The Examiner has rejected claim 14 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Scott *et al.* (Hort Science, vol. 30, no. 3, pages 643-644, 1995).

Claim 14 has now been cancelled rendering moot the Examiners rejection with respect to this claim.

Claims Objections

The Examiner has objected to claims 2 and 40 as being dependent upon a rejected base claim.

Claims 2 and 40 have now been cancelled rendering moot the Examiners objections with respect to these claims.

In view of the above amendments and remarks it is respectfully submitted that claims 1, 7-8, and 37-39 are now in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



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